

Message Text

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FM AMEMBASSY MONTEVIDEO

TO SECSTATE WASHDC PRIORITY 6915

INFO AMEMBASSY BUENOS AIRES

UNCLAS SECTION 1 OF 2 MONTEVIDEO 2471

BUENOS AIRES FOR DEA

E.O. 11652: NA

TAGS: SNAR, CASC, CPAS, UY

SUBJ: NARCOTICS LAWS OF URUGUAY

REF: STATE 170187

1. EMBASSY OFFICERS HAVE REVIEWED GOU CRIMINAL CODE LAW NUMBER 14294 OF OCTOBER 31, 1974, WHICH COVERS NARCOTICS OFFENSES. THIS LAW HAS BEEN IN EFFECT SINCE JANUARY 11, 1975, BUT HAS HAD LITTLE TESTING. THERE HAVE BEEN VERY FEW ARRESTS OF INDIVIDUALS (AND NO U.S. CITIZENS), ON NARCOTIC CHARGES, AND THE LEVEL OF NARCOTICS TRAFFIC AND CONSUMPTION IS BELIEVED TO BE LOW. OUR RESPONSE TO REFERENCED REQUEST IS BASED ON STUDY OF THE CRIMINAL CODE, ANSWERS PROVIDED BY THE URUGUAYAN POLICE NARCOTICS BUREAU TO QUESTIONS POSED IN REFTEL, AND DISCUSSIONS WITH KNOWLEDGEABLE URUGUAYAN LAWYERS RE THE WORKINGS OF THIS COUNTRY'S LEGAL SYSTEM IN NARCOTICS CASES. RESPONSES ARE KEYED TO PARAGRAPH TITLES IN REFTEL.

2. POSSESSION:

A) THE LAW DOES NOT DIFFERENTIATE BETWEEN POSSESSION OF VARIOUS NARCOTIC SUBSTANCES. RATHER, PENALTIES ARE THE SAME, REGARDLESS OF THE SUBSTANCE. THERE IS NO CRIMINAL PENALTY, HOWEVER, FOR AN INDIVIDUAL WHO IS IN POSSESSION OF AN (UNDEFINED) "MINIMUM AMOUNT" OF A NARCOTIC OR DANGEROUS DRUG FOR PERSONAL CONSUMPTION.

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VIDUAL WHO IS IN POSSESSION OF AN (UNDEFINED) "MINIMUM AMOUNT" OF A NARCOTIC OR DANGEROUS DRUG FOR PERSONAL CONSUMPTION.

B) THERE IS NO QUALIFYING AMOUNT PRESCRIBED BY LAW. IN THE CASE OF PERSONAL CONSUMPTION, THE "MINIMUM AMOUNT" IS DETERMINED BY GOU AUTHORITIES IN EACH INDIVIDUAL CASE.

C) PENALTY FOR POSSESSION OF "MINIMUM AMOUNT" FOR PERSONAL USE IS MUCH LESS SEVERE THAN FOR OTHER NARCOTICS OFFENSES, AND ITS DETERMINATION IS WITHIN THE DISCRETION OF LAW ENFORCEMENT AND JUDICIAL AUTHORITIES. USUAL PENALTY FOR POSSESSION OF "MINIMUM AMOUNT" FOR PERSONAL CONSUMPTION IS MANDATORY COMMITMENT TO MEDICAL CARE. HOWEVER, OTHER CASES OF POSSESSION CARRY PENALTIES AS SEVERE AS OTHER DRUG OFFENSES.

3. TRAFFICKING:

A) ALL CONTROLLED SUBSTANCES ARE CONSOLIDATED INTO A GENERAL TRAFFICKING OFFENSE (SEE DISTINCTIONS BELOW).

B) 1. PENALTIES FOR NARCOTICS OFFENSES RANGE FROM A MINIMUM OF TWO YEARS TO A MAXIMUM OF 20 YEARS IMPRISONMENT. SPECIFIC PENALTIES FOR OTHER THAN PERSONAL POSSESSION ARE AS FOLLOWS:

A. FOR PLANTING, CULTIVATING, GROWING, EXTRACTING, MANUFACTURING, PREPARING, OR PRODUCING - 3 TO 10 YEARS' IMPRISONMENT.

B. FOR IMPORTING, EXPORTING, TRANSITING, DISTRIBUTING, TRANSPORTING, POSSESSING, STORING, OFFERING FOR SALE, OR NEGOTIATING TO SALE - 3 TO 10 YEARS' IMPRISONMENT.

C. FOR ORGANIZING OR FINANCING ANY OF ABOVE DESCRIBED ACTIVITIES, EVEN WHEN PERFORMED OUTSIDE OF URUGUAYAN NATIONAL
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TERRITORY - 6 TO 18 YEARS' IMPRISONMENT.

D. FOR ENGAGING IN ACTIVITIES DESIGNED TO INTRODUCE PROSCRIBED SUBSTANCES ILLEGALLY INTO ANOTHER COUNTRY - 2 TO 8 YEARS' IMPRISONMENT.

E. FOR SUPPLYING, ADMINISTERING, OR FACILITATING THE CONSUMPTION OF PROSCRIBED SUBSTANCES - 2 TO 8 YEARS' IMPRISONMENT.

F. FOR VIOLATING THE "DISPOSITION" OF THE LAW AS IT RELATES TO IMPORTATION, EXPORTATION, PRODUCTION, ELABORATION, COMMERCIALIZATION OR SUPPLY OF PROSCRIBED SUBSTANCES - 2 TO 4 YEARS' IMPRISONMENT.

G. FOR GIVING, SELLING, SUPPLYING, OR FACILITATING THE USE OF PROSCRIBED SUBSTANCES TO MINORS (UNDER 21 YEARS OF AGE) OR MENTALLY DISABLED PERSONS - 4 TO 15 YEARS' IMPRISONMENT.

H. FOR INTRODUCTION OF PROSCRIBED SUBSTANCES TO A MINOR OR TO A MENTALLY INCOMPETENT PERSON WHICH LEADS TO

SERIOUS ILLNESS OR DEATH - 5 TO 20 YEARS' IMPRISONMENT.

I. FOR ADMINISTERING PROSCRIBED SUBSTANCES TO A PERSON WITHOUT HIS/HER CONSENT - TO 15 YEARS' IMPRISONMENT.

J. FOR ABUSE OR FRAUDULENT USE OF A PROFESSION DEDICATED TO THE PROTECTION OF PUBLIC HEALTH OR FOR INSTANCES WHEN THE DRUG OFFENSE TAKES PLACE IN A PUBLIC PLACE (SCHOOLS, HOSPITALS, PARKS, JAILS, SPORTING ARENAS, SOCIAL CLUBS, ETC.) - 4 TO 15 YEARS' IMPRISONMENT.

2. ACCORDING TO POLICE, IF A PRISON SENTENCE IS LESS THAN 18 MONTHS' IMPRISONMENT, SPECIAL PROVISIONAL LIBERTY IS POSSIBLE (SEE ALSO PARAGRAPH 6E).
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C) ELEMENTS OF THE OFFENSE ARE DESCRIBED ABOVE. THERE IS NO DIFFERENTIATION IN THE LAW FOR AMOUNTS. THE PENALTIES ARE THE SAME FOR ATTEMPTED OR CONSUMMATED OFFENSES.

D) CONSPIRACY TO TRAFFIC, IMPORT, OR EXPORT NARCOTIC SUBSTANCES IS A CRIMINAL OFFENSE.

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4. CULTIVATION, PRODUCTION, ELABORATION:

THE CULTIVATION, PRODUCTION, OR ELABORATION OF ANY NARCOTIC OR PSYCHOTROPIC SUBSTANCE IS PROHIBITED EXCEPT FOR SCIENTIFIC RESEARCH WITH THE EXPRESS CONSENT OF THE MINISTRY OF PUBLIC HEALTH AND CONDUCTED UNDER THE MINISTRY'S DIRECT CONTROL. THE PENALTY FOR CULTIVATING, GROWING, MANUFACTURING, PRODUCING, OR ELABORATING PROSCRIBED SUBSTANCES IS 3 TO 10 YEARS' IMPRISONMENT. (EMBASSY IS PRESENTLY UNABLE TO ESTABLISH WHAT LIMITS ARE IMPOSED BY THE MINISTRY OF PUBLIC HEALTH ON APPROVED PRODUCTION, SLAE, ETC., OR HOW THESE LIMITS ARE CONTROLLED BY THE MINISTRY).

5. FINANCIAL:

A) THERE IS A SPECIFIC SECTION OF THE LAW RELATED TO PROVIDING FINANCIAL SUPPORT FOR DRUG OPERATIONS FOR WHICH THE PENALTY IS 6 TO 18 YEARS' IMPRISONMENT.

B) URUGUAY HAS NO CURRENCY CONTROL LAWS ON EXPORT OF CURRENCY OR RESTRICTIONS ON FOREIGN BANK ACCOUNTS.

6. CRIMINAL PROCEDURE:

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A) URUGUAYAN LAW PROVIDES THAT AN ACCUSED PERSON MUST BE PRESENTED BEFORE A JUDGE (A JUDGE OF INSTRUCTION) WITHIN 24 HOURS OF HIS ARREST. THE INDIVIDUAL DOES NOT HAVE ACCESS TO A LAWYER OR TO A CONSULAR OFFICER DURING THE 24-HOURS PERIOD. UPON RECEIVING THE CASE, THE JUDGE MUST DECIDE WITHIN 48 HOURS WHETHER THERE IS SUFFICIENT EVIDENCE TO BEGIN JUDICIAL PROCEEDINGS AND THEREFORE ISSUE A DECREE OF "PROCESAMIENTO" OR TO DISMISS THE CASE, OR TO REQUEST FURTHER INVESTIGATION. THE ACCUSED WOULD NOT BE ABLE TO SEE A LAWYER (AND PROBABLY NOT A CONSULAR OFFICER) UNTIL AFTER THE ISSUANCE OF THE ORDER OF "PROCESAMIENTO" AND THE UP TO 48-HOUR PERIOD OF CONSIDERATION WAS OVER. IN PRACTICE, THERE ARE SOME CASES WHICH ARE DELAYED FOR MORE THAN THE PERIODS SET FORTH UNDER THE ORDINARY PENAL CODE. (EMBASSY CANNOT ESTIMATE HOW LONG SUCH DELAYS MIGHT BE).

B) & C) LOCAL POLICE AUTHORITIES CONSIDER THE PERIOD OF UP TO 24 HOURS BEFORE THE INITIAL HEARING TO BE THE PERIOD OF PRE-TRIAL DETENTION. HOWEVER, THE URUGUAYAN COURT SYSTEM DOES NOT HAVE THE U.S. ADVERSARY SYSTEM OF JUSTICE (BASED ON ANGLO-SAXON COMMON LAW) WITH CONFRONTATION BETWEEN THE ACCUSED AND WITNESSES AGAINST HIM, VIGOROUS CROSS-EXAMINATION OF WITNESSES, TRIAL BY JURY, AND THE RIGHT OF THE ACCUSED TO AN ATTORNEY AS SOON AS HE HAS BEEN TAKEN INTO CUSTODY. RATHER THAN HAVING TESTIMONY AND ARGUMENTS PRESENTED ORALLY IN PUBLIC TRIALS, THE URUGUAYAN COURT SYSTEM RELIES ON WRITTEN PROCEEDINGS IN THE PRE-TRIAL INVESTIGATION, ARRAIGNMENT, TRIAL AND SENTENCING STAGES OF THE JUDICIAL PROCESS.

ATTORNEYS ON THE OPPOSING SIDES PRESENT WRITTEN BRIEFS AND INTERROGATORIES TO THE JUDGE, ON WHICH HE BASES HIS DECISION. THIS ARRANGEMENT IS SIMILAR TO THAT USED IN OTHER CIVIL LAW COUNTRIES. IF THE DEFENDANT WISHES TO APPEAL, THE CASE MUST BE TAKEN BEFORE A JUDGE OF A CRIMINAL COURT, A PROCESS WHICH CAN TAKE MONTHS OR YEARS. THE BURDEN OF PROOF IS UPON THE ACCUSED. THERE IS THUS NO AVERAGE LENGTH OF TRIAL PROCESS.

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D) PUBLIC DEFENDERS CAN BE APPOINTED BY THE COURT AT NO COST TO THE DEFENDANT.

E) IN STANDARD PRACTICE, IF THE MINIMUM SENTENCE FOR A CHARGE IS UNDER TWO YEARS, THE INDIVIDUAL THROUGH HIS LAWYER CAN APPLY FOR AN ORDER OF "SOBRESEIMIENTO", WHICH PROVIDES PROVISIONAL LIBERTY. HE CAN BE CONDITIONALLY FREED IN THIS MANNER, IF HIS BEING AT LIBERTY IS NOT CONSIDERED TO INTERFERE WITH AN ONGOING INVESTIGATION. THE JUDGE OF INSTRUCTION, WITH THE APPROVAL OF THE PUBLIC PROSECUTOR, DETERMINES WHETHER AN INDIVIDUAL CAN BE RELEASED. SUCH A DECISION REQUIRES FROM 30 DAYS TO FIVE MONTHS, AND, IF FAVORABLE, FURTHER NECESSITATES THE SUBMISSION OF A BOND AND/OR A SWORN GUARANTEE THAT THE INDIVIDUAL WILL NOT LEAVE THE COUNTRY. TIME SPENT ON CONDITIONAL LIBERTY COUNTS TOWARD SERVING THE SENTENCE. IF THE MINIMUM SENTENCE IS FOR MORE THAN TWO YEARS, THE INDIVIDUAL IS NOT ELIGIBLE FOR CONDITIONAL LIBERTY.

F) MINOR OFFENDERS, ESPECIALLY THOSE CONVICTED SIMPLY FOR POSSESSION OF SMALL AMOUNTS, MIGHT WELL BE EXPELLED AFTER THE REQUIRED MEDICAL EXAMINATION OR SENTENCE. IF A U.S. CITIZEN WISHED TO LEAVE THE COUNTRY AFTER BEING ISSUED AN ORDER OF "SOBRESEIMIENTO", THE JUDGE WOULD HAVE TO APPROVE HIS LEAVING THE COUNTRY. SOME URUGUAYAN JUDGES ARE KNOWN TO PREFER THAT FOREIGN NATIONALS UNDER "SOBRESEIMIENTO" LEAVE URUGUAY.

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